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NOTIFICATION

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The following Bill together with the Statement of Objects and Reasons, is published, as ordered by the Speaker under Rule 73 of the Rules of Procedure and Conduct of Business in this Assembly.

Legislature Secretariat,
Trivandrum.

V. KRISHNAMOORTHI,
Secretary, Legislative Assembly.

THE KERALA LAND CONSERVANCY BILL, 1957

A Bill to check the unauthorised occupation of Government lands.

Preamble.—WHEREAS it is necessary to enact a uniform law for checking the unauthorised occupation of Government lands;

BE it enacted in the Eighth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Land Conservancy Act, 1957.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Repeal.*—The Travancore-Cochin Land Conservancy Act, 1951, and the Madras Land Encroachment Act, 1905, as in force in the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), are hereby repealed.

3. *Property of Government defined.*—(1) All public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, the bed of the sea and of harbours and creeks below high water mark, the beds and banks of rivers, streams, irrigation and drainage channels, canals, tanks, lakes, backwaters and water courses, and all standing and flowing water, and all lands wheresoever situated, save in so far as the same are the property of—

(a) Jenmies or holders of Inams; or

(b) holders of lands in any way subject to the payment of land revenue to the Government; or

(c) any other registered holder of land in proprietary right; or

(d) any person holding land under grant from the Government otherwise than by way of a licence; or

(e) any person claiming through or holding under any of the persons referred to in clauses (a), (b), (c) or (d);

are, and are hereby declared to be, the property of Government, except as may be otherwise provided by any law for the time being in force, subject to all rights of way and other public rigbts and to the natural and easement rights of other land owners and to all customary rights legally subsisting.

Explanation I.—Lands once registered in the name of a person but subsequently abandoned or relinquished, and all lands held by right of escheat, purchase, resumption, reversion or acquisition under the Land Acquisition Act for the time being in force, are the property of Government within the meaning of this section.

Explanation II.—In this section, the expression 'high-water mark' means the highest point reached by the ordinary spring tide at any season of the year.

Explanation III.—Where, in regard to roads, lanes and canals, survey stones had been, in the original demarcation under the Survey Act in force, planted for the sake of convenience and safety inside compound walls and gates of compounds, in house verandhas, door steps, porticoes, masonry drains and similar structures of a permanent nature, such walls, gates, verandhas, etc., shall not be deemed to be the property of Government within the meaning of this section.

(2) All unassessed lands within the limits of private estates used or reserved for public purposes or for the communal use of villagers, and all public roads and streets vested in any local authority shall, for the purpose of this Act, be deemed to be the property of Government.

4. (1) *"Poramboke" defined.*—'Poramboke' shall mean and include unassessed lands which are the property of Government under Section 3 (1) or (2) used or reserved for public purposes or for the communal use of villagers, such as—

(a) all public roads, streets, lanes, pathways, the bridges, ditches, dykes and fences on or beside the same;

(b) the beds and banks of rivers, irrigation and drainage channels, traffic canals, tanks, lakes, back-waters and water courses;

(c) markets, burial grounds, landing ghauts; and

(d) all other property which the Government may, for the purpose of this Act, from time to time, declare to be Poramboke;

(2) *"Occupant" defined.*—"Occupant" shall mean a person actually in possession or occupation of a land which is the property of Government.

5. *Land which is the property of Government not to be occupied without permission.*—From and after the commencement of this Act, it shall not be lawful for any person to occupy a land which is the property of Government whether a poramboke or not without permission from the Government or such officer of the Government as may be empowered in this behalf.

6. *Earth, metal, laterite, lime-shell etc., not to be removed from land which is property of Government without permit.*—(1) It shall not be lawful for any person to destroy, remove or appropriate for himself earth, metal, laterite, lime-shell or such other articles of value as may be notified by the Government from any land which is the property of Government, whether a poramboke or not, except under and in accordance with the terms and conditions of a permit issued by the Government or such officer of Government as may be empowered in that behalf and on payment of compensation at the rate prescribed under sub-section (2).

(2) The Government may, from time to time, by notification in the Gazette, prescribe the rate at which compensation shall be payable for earth, metal, laterite, lime-shell or other notified articles of value destroyed, removed or appropriated from land which is the property of Government.

(3) Whoever unauthorisedly destroys, removes or appropriates for himself earth, metal, laterite, lime-shell or other notified articles of value from any land which is the property of Government, whether a poramboke or not, shall be liable to pay such fine not exceeding fifty rupees as may be imposed by the Collector and shall also be liable to pay by way of damages an amount equivalent to the compensation which would have been payable if sub-section (2) were applicable thereto.

(4) The Government may remit in whole or in part the compensation or damages payable under this section,—

(a) in favour of any agriculturist, if the earth, metal, laterite, lime-shell or other notified article of value destroyed, removed or appropriated is for *bona fide* agricultural purposes, or

(b) in favour of a co-operative society.

7. *Punishment for unauthorisedly occupying a land which is the property of Government.*—Whoever occupies a land which is the property of Government whether a poramboke or not contrary to section 5 shall be liable to pay such fine not exceeding two hundred rupees as may be imposed by the Collector.

Explanation.—A tenant unauthorisedly holding over after the expiry of his term of lease is liable to a fine within the meaning of this section.

8. (1) *Levy of assessment on lands which are the property of Government unauthorisedly occupied.*— Any person unauthorisedly occupying a land which is the property of Government other than a poramboke and liable to pay a fine under section 7 shall, in addition, be liable to pay by way of assessment for the whole period of his occupation such amount as may be fixed by the Collector in accordance with

the rate that may be prescribed by the Government from time to time in this behalf and where no such rate is prescribed by the Government, such amount by way of assessment as may reasonably be fixed by the Collector.

(2) *Levy of prohibitory assessment on Poramboke unauthorisedly occupied.*—Any person unauthorisedly occupying a poramboke and liable to pay a fine under section 7 shall, in addition, be liable to pay such prohibitory assessment for the whole period of occupation as may be imposed by the Collector.

Payment of assessment under sub-section (1) or prohibitory assessment under sub-section (2) shall not confer any right of occupancy, and the liability to pay such assessment shall cease from the date on which the land concerned is relinquished.

9. *Liability for unauthorised occupation.*— Any person unauthorisedly occupying any land which is the property of Government whether a poramboke or not and liable to a fine under section 7 shall, in addition to the assessment or prohibitory assessment to which he may be liable under section 8, be liable for the value, as adjudged by the Collector, of any useful tree destroyed or appropriated by him.

10. *Penalty for destruction or appropriation of trees.*—Any person who destroys or appropriates any useful tree belonging to the Government shall be liable for the value of the tree as adjudged by the Collector, and shall also be liable on conviction by a magistrate to be punished with imprisonment for a term extending to one month or with fine not exceeding one hundred rupees, or with both.

11. (1) *Liability of unauthorised occupant to summary eviction, forfeiture of crops, etc.*—Any person unauthorisedly occupying any land for which he is liable to pay a fine under section 7 and an assessment or prohibitory assessment under section 8 may be summarily evicted by the Collector, and any crop or other product raised on the land shall be liable to forfeiture, and any building or structure erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct.

(2) *Mode of eviction.*—An eviction under this section shall be made in the following manner, namely:—

By serving a notice on a person reputed to be in occupation or his agent requiring him within such time as the Collector may deem reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and, if the officer removing any such

person shall be resisted or obstructed by any person, the Collector shall hold a summary enquiry into the facts of the case, and if satisfied that the resistance or obstruction still continues, may issue a warrant for the arrest of the said person, and on his appearance may send him with a warrant in the form of the Schedule for imprisonment in the Civil Jail of the District for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance:

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 and 188 of the Indian Penal Code in respect of the same facts.

12. *Prior notice to occupant, etc.*—The Collector shall, before passing an order under this Act, give notice to the occupant or other person likely to be affected by the order, and record any statement which such occupant or person may make and any evidence which he may adduce within a reasonable time; and all orders passed by the Collector under this Act shall be in writing and under his hand.

The Collector may require any subordinate officer not below the rank of a Deputy Tahsildar to hold the enquiry as prescribed in Paragraph 1 of this section and submit the record to him. On such record the Collector may pass orders.

For the purpose of section 199 of the Indian Penal Code the proceedings taken by the Collector under this section shall be deemed to be judicial proceedings.

13. *Power to make rules.*—The Government may make rules or orders, either generally or in any particular instance,—

(a) regulating the rates of assessment under section 8 (1);

(b) regulating the imposition of prohibitory assessment under section 8 (2);

(c) declaring that any particular land or class of lands shall not be open to occupation;

(d) regulating the service of notices under this Act;

(e) regulating the manner in which the powers of the Collector under this Act may be exercised; and

(f) generally to carry out the provisions of this Act.

Such general rules or orders shall be made only after previous publication in the Gazette.

14. *Recovery of fines, assessment, etc., as arrears of land revenue.*—All fines, assessments, and prohibitory assessments, value of trees destroyed or appropriated, compensation or damages payable under section 6 and all costs of eviction and removal of encroachments shall be recovered as arrears of land revenue under the provisions of the Revenue Recovery Act for the time being in force.

15. *Officers to exercise Powers of Collector.*—The Government may, by notification in the Gazette, authorise any officer by name or by virtue of his office to exercise all or any of the powers conferred on a Collector under this Act.

16. *Appeal and revision.*—(1) The Government may, by notification in the Gazette, direct that an appeal from the decision or order of any officer empowered under section 15 shall lie to the Collector.

(2) No order shall be passed in appeal without previous notice to the party to be affected by such order.

(3) There shall be no appeal against the decision or order passed in appeal by the Collector.

(4) It shall be lawful for the Board of Revenue to revise any decision or order passed by any officer subordinate to the Board of Revenue under this Act:

Provided that no order setting aside or modifying any such decision or order shall be passed without giving previous notice to the party to be affected thereby.

(5) Pending disposal of any appeal or revision petition under this Act, the appellate authority or the revisional authority, as the case may be, may suspend the execution of the order appealed or petitioned against.

17. *Limitation of appeal.*—No appeal shall be brought after the expiration of 60 days from the date of the decision or order complained of, provided that, in computing the period of 60 days, the time required to obtain a copy of the decision or order appealed against shall be excluded, but the appeal may be admitted after the period hereby prescribed when the appellant satisfies the authority to whom he appeals that he had sufficient cause for not preferring the appeal within the period prescribed.

18. *Petition of appeal to be accompanied by the order appealed against.*—Every petition of appeal under this Act shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

19. *Saving of operation of other laws in force.*—Nothing contained in this Act shall be construed as exempting any person unauthorisedly occupying land from liability to be proceeded against under any other law for the time being in force:

Provided that, if any penalty has been levied under section 7 or section 8 of this Act, no similar penalty shall be levied from him under any other law in respect of such occupation.

20. *Saving of suits by persons aggrieved by proceedings under this Act.*—No suit against the Government shall be entertained in any Civil Court in respect of any order passed

under this Act except upon the ground that the land in respect of which such order has been passed is not a land which is the property of Government whether a poramboke or not:

Provided that Civil Courts shall not take cognizance of any such suit unless it shall be instituted within one year from the date on which the cause of action arose.

SCHEDULE.

Form of warrant to be issued by the Collector under section 11.

SEAL.

To

The Officer in charge of the Civil Jail at

Whereas A. B. of has resisted or obstructed C. D. in removing E. F. (or himself, that is, the said A. B.) from certain land in the village of in the taluk, and whereas it is necessary, in order to prevent the continuance of such obstruction or resistance, to commit the said A. B. to close custody, you are hereby required under the provisions of section 11 of the Kerala Land Conservancy Act, 1957 to receive the said A. B. into the Jail under your charge and there to keep him in safe custody for days.

Dated this day of

(Signature of Collector.)

STATEMENT OF OBJECTS AND REASONS.

The law relating to the prevention of unauthorised occupation of Government lands in the State is contained in the Travancore-Cochin Land Conservancy Act, 1951 and the Madras Land Encroachment Act, 1905. It is considered necessary to have a uniform law on the subject applicable to the whole State. The Bill seeks to achieve this purpose.

K. R. GOURI.

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